



HOW SHOULD AN ESTATE PLAN BE STRUCTURED IN A SECOND MARRIAGE OR BLENDED FAMILY SITUATION?

A thorough estate plan should take into account the possibility that one's surviving spouse, children or grandchildren may be married, and also potentially divorced, during their lifetimes. The impact of marriage and divorce law thus is quite relevant when structuring gifts or bequests to a spouse, children and grandchildren.

Many clients rightfully worry that gifts made now to a spouse, children or grandchildren may eventually inure to the relative's spouse. As a general rule, property one spouse receives by gift or inheritance should be accorded a somewhat different status than property resulting from earnings during the marriage, depending upon how long the property was held during the marriage, whether it has appreciated in value, whether the appreciation was the result of one spouse's efforts and whether there is other property available for division. Nevertheless, as discussed above, all or any part of the estate of one spouse may be awarded to the other spouse in a divorce and there can be no certainty as to how a judge will treat property received by gift or inheritance.

To reduce the risk that a spouse's, child's or grandchild's gift or inheritance could be lost in the event of divorce, many clients chose to establish "spendthrift" trusts for their spouse, children or grandchildren rather than making outright gifts or bequests. Children of spouses or spouses of children and grandchildren generally do not acquire any rights in properly-drafted spendthrift trusts created for the benefit of such person. In a divorce or remarriage, the court may still consider the value as one factor when making an equitable distribution of property.

Nevertheless, the trust property should still enjoy greater protection than it would if such person owned such property outright.